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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/804,983	03/13/2001	Marvin A. Leedom	2506.2012-001	9359

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EXAMINER

TRAN, SINH N

ART UNIT	PAPER NUMBER
2643	

DATE MAILED: 08/01/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Ch/

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/804,983	LEEDOM, MARVIN A.
Examiner	Art Unit	
Sinh Tran	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 May 2003.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-58 is/are pending in the application.

4a) Of the above claim(s) 19-25 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-18,26-44,49 and 51-58 is/are rejected.

7) Claim(s) 45-48 and 50 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

    1. Certified copies of the priority documents have been received.

    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>6</u> .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-8, 11-18, 26-33, 36-44 are rejected under 35 U.S.C. 102(e) as being anticipated by Brimhall et al (6,456,720).

Regarding claims 1, 26 and 44, Brimhall et al disclose a hearing aid comprising a first section or housing (41a, Fig. 9) containing a microphone (160) and electronics (other sensitive electronics in the upper portion 41a, see col. 8, ln. 32-33); a second section or housing (41b, Fig. 9) containing a battery (the battery shown in Fig. 20 with battery contact 190) and a flex circuit (102, Fig. 11); a third section or housing having a compliant tip (body portion 20 and compliant tip 200) and a receiver (150).

Regarding claims 2-8 and 27-33, Brimhall et al further disclose the flex circuit having a receiver and microphone mating portions (104, 106) and conductive paths include of at least one receiver lead and at least one anode lead (200, 202 and 204, Fig. 12E).

Regarding claims 11 and 36, the flex circuit comprises at least one aperture to allow air to travel to the battery (the contact 190 is bent therefore leaving an opening for air to travel to the battery, see Fig. 11).

Regarding claims 12 and 37, Brimhall et al further disclose a mechanical securing mechanism (66).

Regarding claims 13 and 38, in the alternative, Brimhall et al disclose a first section (faceplate 40 contains portion of microphone and the electronics) containing a microphone and electronics; a second section (20) attached to the first section and containing a battery and a flex circuit (Fig. 10 shows shell 2 contains portion of the battery and the flex circuit; and third section (compliant tip 200). Brimhall et al further disclose a potting material surrounding the receiver to attenuate acoustic feedback (152 and 152, see col. 13, second paragraph).

Regarding claims 14-15, 39-43, 49, 51-53, Brimhall et al further disclose the conformal tip (200) having a mushroom shaped portion (fig. 24 or 25) and channel (214).

Regarding claims 16-18, Brimhall et al disclose the tip comprising a first durometer material (200) and a second durometer (20).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 54-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Oliveira et al (5,002,151).

Oliveira et al disclose a tip for a hearing aid comprising a first material having a first durometer (13-retarded recovery foam), a second material having a second durometer (duct 16 having 40A-40D durometer, col. 4, line 20) and a third material having a third durometer (12 or 92 having 80 durometer, col. 8, second paragraph).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 54-58 are rejected under 35 U.S.C. 102(e) as being anticipated by Brown et al (6,129174).

Brown et al disclose a tip for a hearing aid comprising a first material having a first durometer (36 having 50 shore), a second material having a second durometer (34 having 90 shore) and a third material having a third durometer (50).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9-10 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brimhall et al.

Brimhall et al fail to disclose that the anode lead includes a discontinuity which prevents the hearing aid from drawing power from the battery, unless bridged by an actuator. It is well known in the art of hearing aids that the hearing aids are turned on/off - drawing/not drawing power from the battery when the electronic circuits are bridged/unbridged by the activation of the on/off switches. Therefore, it would have been obvious to one of ordinary skill in the art to provide a discontinuity in the lead or the electrical circuit of Brimhall et al, as is well known in the art, so as to draw or not draw power from the battery when the discontinuity lead is bridged or not bridge by switches to activate on/off of the hearing aid.

*Allowable Subject Matter*

9. Claims 45-48 and 50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sinh Tran whose telephone number is (703) 305-4040. The examiner can normally be reached on M,T&Th 9:00AM-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on (703) 305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9314 for regular communications and (703) 872-9314 for After Final communications.

**Any response to this action should be mailed to:**

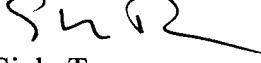
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9314, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

  
Sinh Tran  
Primary Examiner  
Art Unit 2643

st  
July 28, 2003

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